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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,953	08/03/2001	Ahmad Akashe	67291	8389
22242	7590	04/23/2004		
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER PRATT, HELEN F	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/921,953	Applicant(s) AKASHE ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viteri et al. (XP-0011062784) in view of Humbert (5,667,825) and Henry et al. (6,509,045) and further in view of Hawley, page 221.

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. The independent claims have been amended to require that the iron-fortified beverage or dried beverage product is free of iron-related organoleptic defects for at least about three months under ambient storage conditions. However, this would have been expected because the iron is chelated with EDTA and therefore not available for chemical reactions, which would have, cause organoleptic defects (Hawley, page 221 under "chelate"). In addition, the independent claims do not contain any other ingredients, which would have made the beverage free of organoleptic defects and only claim as much as the cited combined references. Nothing has been shown that the beverages of Viteri et al. would not have been free of any organoleptic defects. Therefore, it would have been obvious to make the product as shown by the combined references.

Claim 16 further requires that the beverage mixture be tested in a particular way. However, nothing new is seen in reconstituting a dried beverage, in that that is the general method of use, and observing any organoleptic defects as this merely requires looking at the beverage and nothing new is seen in this. Even the public often checks beverages for defects such as discoloration and sedimentation in general. Therefore it would have been obvious to reconstitute a beverage and checks it for organoleptic defects as claimed.

Claims 27-36 have been added, but are basically the same as the previously submitted claims and are therefore obvious for those reasons.

ARGUMENTS

Applicant's arguments filed 3-5-04 have been fully considered but they are not persuasive. Applicants argue as to Viteri et al. is only fortified with small amounts of ferric EDTA. However, the independent claims do not require any particular amounts of such. In addition, the whole reference is to fortification of vitamin A and ferric EDTA and various studies were done to show the benefits of both (entire reference). The sugar was fortified with enough iron to control iron deficiency. Nothing has been shown that this amount is not within the range of claim 4. Even if it is not, the concept of fortification of foods with iron is ages old and it would have been within the skill of the ordinary worker to fortify to particular amounts.

Applicants argue as to Henry et al. '045 that EDTA is not used as a fortification agent with iron. However, the abstract discloses that the beverages are fortified with amino acid chelated iron that does not impart an objectionable color due to ferric ion

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reducing agents. Of course, an amino acid chelated iron is the same as ferric EDTA as claimed. Also, the reference discloses that "to prevent off-color development caused by fortification of beverages or foods with iron .it is important to include at least one agent selected from" ... (agents capable of preferentially complexing ferric ions..". Then the reference cites lower down in the paragraph one of complexing agents being ethylenediamine tetracetic acid" which is also EDTA (col. 10, lines 45-67). In addition this is a dry beverage powder (abstract). Therefore, it is seen that the beverage is fortified with a complex of iron and EDTA, i. e. ferric EDTA.

Applicants argue that the ferric EDTA is not the sole source of dietary iron. However, the claims are not limited to this as a sole source.

Even though ferric EDTA may not be added as such as argued, the reference recognizes that the iron sources of the reference may have free ions and therefor are in need of a complexing agent such as EDTA as discussed above. Therefore, ferric EDTA is seen to have been in the composition.

Applicants argue that ferric EDTA or sodium iron EDTA is water-soluble and would be expected to be reactive. However, this is not seen because the dictionary reference (Hawley) discloses that EDTA is only slightly soluble in water (page 431). In addition, the iron is chelated and not available for other reactions (Hawley page 221).

Applicants have just said that the "iron in the ferric EDTA does not appreciably interchange with other cations" page 13 of arguments last para. so one would have expected that it would not produce off flavors and off colors. Even if the references do

not say the products are stable they would have been because the composition and methods are the same, except for the testing limitations.

Humbert et al. was used to teach the use of FE in a fish sauce (col. 2, lines 12-22), which was disclosed as prior art in the reference.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 4-21-04

H. Pratt
HELEN PRATT
PRIMARY EXAMINER